

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*Wells
Transp.*

865-2

FILE: B-191201

DATE: JAN 15 1979

MATTER OF: Yellow Freight System, Inc.

DIGEST:

SHIPPER
[ENTITLED ~~NOT~~ to RATE Producing
LOWEST CHARGES]

Where either of two rates may be applied the shipper is entitled to the rate which produces the lowest charges on the shipment.

Yellow Freight System, Inc., requests review by the Comptroller General of the final action taken by the General Services Administration (GSA) pursuant to Section 201(3) of the General Accounting Office Act of 1975, 49 U.S.C. 66(b) (Supp. V, 1975). GSA withheld \$1,840.26 from other moneys due the carrier to collect an overcharge discovered in the freight charges billed and paid on a less-than-truckload mixed shipment weighing a total of 8,309 pounds moving from West Yermo, California, to Camp Lejeune, North Carolina, under Government bill of lading No. K-0730126, issued on March 19, 1975.

Yellow Freight contends that GSA used an improper basis in computing the overcharge and requests repayment of \$763.46. Yellow Freight contends that the radio repair outfits contained in the shipment should be rated as a truckload of 12,000 pounds under item 147850 of National Motor Freight Classification 100-A, and that the charges on them should be computed at the truckload rate of \$13.46 per hundred pounds published in Rocky Mountain Motor Tariffs ICC RMB 120-A and 521. (In its initial billing the carrier used a minimum weight of 20,000 pounds in computing those charges.) On all the other articles contained in the shipment, Yellow Freight contends that the charges should be computed at the same less-than-truckload rates as used in the initial billing.

GSA contends that a less-than-truckload rate of \$14.07 per hundred pounds provided in item 2000 of Rocky Mountain Motor Tariff Bureau U.S. Government Quotation ICC RMB 33 (RMB 33) which applies on shipments weighing between 5,000 and 9,999 pounds should be used on all of the articles in the 8,309-pound shipment.

The \$14.07 rate applies on freight all kinds except those articles named in item 1225. Radio repair outfits are not named in item 1225.

Among other things, item 100 of Quotation RMB 33 provides as follows:

"NOTE 1 - THE CLASSES RULES AND REGULATIONS, ESTIMATED AND MINIMUM TRUCKLOAD OR VOLUME WEIGHTS, SHIPPING AND

~~003231~~

all

PACKING REQUIREMENTS, ALLOWANCES AND PRIVILEGES, OR OTHER PROVISIONS OR CONDITIONS PUBLISHED IN THIS QUOTATION, ABBROGATE AND SUPERSEDE THOSE IN THE GOVERNING PUBLICATIONS IN CONFLICT."

Note 1 of item 100, by its terms, provides for the replacement of the ratings published in the National Motor Freight Classification 100-A on shipments ratable under Quotation RMB 33. The quotation, which contains the less-than-truckload rates, is a self-contained rate authority which produces lower charges than those available under the motor freight classification and the carrier's published tariffs.

When either of two rate authorities may be applied to compute the charges on a given shipment, the shipper is entitled to application of the rate which produces the lower charges. Emory Air Freight Corp. v. United States, 499 F.2d 1255 (Ct. Cl. 1974); Union Pacific R.R. v. United States, 163 Ct. Cl. 473 (1963); Union Pacific R.R. v. Ore-Ida Potato Products, Inc., 252 F.2d 505 (9th Cir. 1958).

Since Quotation RMB 33 is not dependent upon the ratings in the National Motor Freight Classification, and since the charges computed under Quotation RMB 33 are lower than the charges computed under tariffs ICC RMB 120-A and 521, the charges computed under Quotation RMB 33 are for application.

The charges computed by the GSA thus appear proper and the settlement action is sustained.

R. F. KELLER
Deputy Comptroller General
of the United States